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SUBJECT: THE ROLE OF THE PROVINCIAL HUMAN RIGHTS COMMISSIONS

REF: OTTAWA 1032 (Federal HR Commission)

¶1. (U) Summary: Canadian provincial human rights commissions and tribunals administer provincial human rights law, with varying provisions, procedures, and jurisdictions. While the public has traditionally viewed these commissions and tribunals as defenders of human rights, they are coming under increasing criticism, especially for their work related to hate speech and minority rights. Mission Canada on July 28 held a DVC with reporting officers from Embassy and constituent posts on the role and perceptions of the federal and provincial human rights commissions and tribunals. Reftel discussed the federal Canadian Human Rights Commission; this message includes information from Mission Canada poloffs on the commissions and tribunals in their respective consular districts. End summary.

Procedures and Jurisdictions Differ

¶2. (U) Provincial human rights commissions and/or tribunals administer provincial human rights laws, with varying provisions, procedures, and jurisdictions. For example, both British Columbia and Ontario practice direct-claims models in which complaints proceed directly to tribunal, while commissions in all other provinces and the territories provide some form of prior screening and refer only a limited number of cases to formal adjudication. Every province administers some type of dispute resolution mechanism, and most also run human rights education and discrimination prevention programs.

Atlantic Canada

¶3. (U) The human rights commissions in the four Atlantic provinces focus on complaints dealing with employment situations, physical disabilities, gender issues, mental disabilities, and age. As populations in Atlantic Canada are largely homogenous, with between 95 and 99 pct of Atlantic Canadians tracing their roots to the British Isles and Europe, few cases of racial discrimination feature in the case-load. The public in Atlantic Canada generally views the commissions as important to upholding human rights. However, public opinion towards the role of the commissions in minority rights cases, especially regarding ethnic and religious rights, is growing increasingly negative, causing a backlash against those groups that bring such cases to the commissions. In one controversial case, the Nova Scotia Human Rights Commission in 2007 ruled that a town council's decision not to fly the gay pride flag over city hall, and its policies regarding homosexual rights in general, were contrary to Nova Scotia's Human Rights Act.

¶4. (SBU) According to Nova Scotia Human Rights Commission Director and CEO Krista Daley (please protect), disability rights complaints are the most common, half of which are employment-related cases involving mental illness. Daley noted that, since the expansion of the Commission's mandate to apply to aboriginal issues, the Commission has also seen an increasing number of cases involving aboriginals. She noted that this mandate change was especially important for aboriginal women, who can now bring sexual harassment cases before the Commission. Daley told the Halifax Consul General

that she was frustrated by the "patchwork" of human rights commissions in each jurisdiction in Canada, all with different mandates and operations structures. She noted that an individual living in one province may have the right to bring a case before his/her commission, but this person may not have the same right in a different province. For example, British Columbia and Nova Scotia commissions have jurisdiction over media, but other provincial commissions have jurisdiction over media, but other provincial commissions do not. Daley also remarked that human rights commissions across Canada are under siege in the media due to misinformation and confusion about their respective mandates, stemming largely from the Maclean's case, which involves allegations that Maclean's magazine violated human rights by publishing allegedly "anti-Islamic" articles and book excerpts written by author Mark Steyn (reftel). She stated that the provincial government is considering withdrawing the Nova Scotia Human Rights Commission's mandate over media cases, and noted that she supported the move.

Quebec

15. (U) The Quebec Human Rights Commission (Commission des droits de la personne et des droits de la jeunesse) upholds and promotes the Charter of Human Rights and Freedoms of Quebec. According to Quebec Human Rights Commission Public Liaison Officer Daniella Robichaud, the majority of complaints the Commission receives are related to employment or housing. The Commission resolves the bulk of inquiries through mediation. The Commission's responsibilities include: receiving inquiries and complaints; conducting investigations; educating the public about human rights; analyzing laws, bills and regulations and, when they are contrary to the Charter, making recommendations to the government; and conducting

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and encouraging research and publication on human rights and freedoms. The Commission also provides support for businesses and organizations implementing affirmative action programs, a requirement for companies with over \$100,000 in contracts with the provincial government. The Quebec Human Rights Commission has the power to initiate investigations, including of the government itself, without representing a specific complainant. In addition, the Commission's legal department is required to review all legislation passed by Quebec's National Assembly to ensure provincial laws and regulations comply with the Charter of Human Rights and Freedoms of Quebec. Uniquely, the Commission also has a mandate to promote and uphold the rights of children under the Youth Protection Act and the Youth Criminal Justice Act.

16. (U) In Quebec, the debate over "reasonable accommodation" since 2006 and the subsequent Bouchard-Taylor Commission's hearings have largely subsumed dialogue over human rights and heightened ethnic and religious sensitivities, resulting in a focus on preserving "Quebecois values." The Commission has contributed to Quebec's focus on human rights and freedoms by instituting one of the most active outreach efforts, maintaining an education department that seeks to engage the community to prevent future human rights violations. Currently, the Commission is working with the municipal police to reduce mistreatment of homeless youths in Montreal. It has also worked with an NGO to publish a booklet for youths on the rights of those detained or arrested by the police. This fall, the Commission will establish a telephone hotline dedicated to receiving complaints of human rights abuses related to reasonable accommodation.

17. (U) In early 2008, the Quebec Human Rights Commission ruled on a case dealing with the application of U.S. International Traffic in Arms Regulations (ITAR). The Commission ruled that Bell Helicopters was guilty of practicing discriminatory hiring practices. Bell argued that its rejection of an internship application from a Haitian-Canadian dual citizen was in compliance with ITAR restrictions against hiring citizens of certain countries to work on U.S. military contracts. Following the Commission's finding (but before the case reached the tribunal stage) Bell settled with the complainant. Until a tribunal judge rules decisively on the issues involved in the case, companies remain at risk of human rights

commissions and tribunals accepting and hearing complaints related to ITAR compliance.

Ontario

18. (U) The Ontario Human Rights Commission received approximately 42,000 complaints in April 2006 through March 2007, of which 2,337 led to formal complaints. More than 56 pct of these complaints focused on disability-related discrimination, and over 36 pct were related to race. The Ontario Human Rights Code requires that complaints be filed within one year of an incident of alleged discrimination. As of June 2008, the Ontario Human Rights Commission no longer processes discrimination complaints, which instead proceed directly to the Human Rights Tribunal of Ontario. The change is designed to expedite the process and eliminate a case backlog of between 2 and 4 years. The Ontario Commission has ruled that it does not have jurisdiction over media-related cases. In the Maclean's case, while it denounced the magazine for "Islamophobic portrayals of Muslims" and "promoting destructive, xenophobic opinions," it dismissed the case, ruling it had no jurisdiction over print media. According to the Commission, while Section 13 of the Qprint media. According to the Commission, while Section 13 of the Ontario Human Rights Code makes it illegal to display or publish certain kinds of offensive material, its limitations are too narrow to apply to most cases.

Manitoba

19. (U) The Manitoba Human Rights Commission screens complaints, provides mediation, and refers cases that cannot be otherwise resolved to independent adjudication in public hearings. Complaints must be filed within six months of an incident of alleged discrimination. Cases that proceed to adjudication must have a significant "public interest" component and the Commission presents the case at the hearing on behalf of both the Commission and the complainant. As with the majority of the commissions, the greatest proportion (80 pct) of complaints relate to employment and disability. Some 90 pct of Manitoba employers fall under the Commission's jurisdiction. The Commission also handles complaints related to aboriginal issues, gender, policing and alleged racial profiling, particularly of aboriginals. In 2006, the Commission received 342 inquiries or pre-complaints, of which 297 became formal complaints and seven went to adjudication.

110. (SBU) Representatives of the Manitoba Human Rights Commission characterize their organization as a proactive, medium-sized agency that has largely escaped the negative criticism leveled at human rights commissions in Western Canada. The Commission attributes this

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to an active focus on public education, awareness, and community outreach -- particularly to youth and employers -- as well as to efforts to partner with academic and community groups to explore, for example, "the next generation" of human rights issues, including the environment. The Commission draws a clear distinction between itself and its Western counterparts with respect to hate speech. Manitoba Human Rights Commission Executive Director Dianne Scarth argued that the Commission would not, for example, have accepted the Maclean's case, due to the narrower scope of the province's human rights code, as well as to a non-confrontational "different climate" of public discourse. She noted that the Manitoba Commission was concerned by the negative publicity generated by the Maclean's case and, although it ultimately decided not to comment, had considered issuing a formal public statement regarding its effect on human rights commissions across the country. In general, the Manitoba Commission appears enthusiastic about expanding its mandate and its interpretation of human rights in the province, although it acknowledges that public opinion is divided over how broad that mandate should be.

111. (U) The federal Canadian Human Rights Commission also maintains an independent presence in Manitoba in the form of its Aboriginal Initiative, which has been based in Winnipeg since 2007. The office

is responsible for research and knowledge-building on human rights issues within federal jurisdiction that affect aboriginal peoples across Canada. Following the passage of legislation in June 2008 extending the Canadian Human Rights Act to aboriginal peoples on-reserve, the Aboriginal Initiative is leading the federal Commission through a three-year transition period to deal with the expansion of its mandate, develop culturally appropriate dispute resolution models and redress mechanisms, and raise community awareness through education and outreach.

Alberta and Saskatchewan

¶12. (U) Over 95 pct of complaints brought to both the Alberta Human Rights Commission and the Saskatchewan Human Rights Commission are employment-related, with approximately one third focusing on mental and physical disabilities and a very small percent dealing with hate speech. The Saskatchewan Human Rights Commission receives approximately 300 to 400 cases each year, of which approximately 20 pct relate to discrimination based on ancestry (including nationality and race), and another 20 pct relate to gender. The neighboring Alberta Human Rights Commission (which covers a population of about 3 million people, triple that of Saskatchewan), receives between 600 and 800 cases per year, of which approximately 34 pct deal with physical disability, 25 pct with gender, and 13 pct with mental disability. In both provinces, parties resolve the majority of cases through settlement. The Alberta Human Rights Commission resolves approximately 97 pct of inquiries through its reconciliation process, and the Saskatchewan Human Rights Commission referred only eight pct of cases to tribunal between 2006 and 2007.

¶13. (U) While a relatively small number of cases in Alberta and Saskatchewan involve hate speech, these cases have generated the most controversy and press coverage, with an increasingly vocal group of critics in Western Canada suggesting the commissions have strayed into censorship at the expense of free speech. In one controversial hate speech case, the Alberta Human Rights Commission ruled that Stephen Boissoin, who identified himself as a pastor and executive director of the Concerned Christian Coalition, violated Alberta's Human Rights, Citizenship and Multiculturalism Act by publishing statements in a local newspaper "likely to expose homosexuals" to "hatred and contempt due to their sexual preference." Boissoin had written a letter published in the Red Deer Advocate that, he argued, was based on his church's teaching against homosexual behavior. In May 2007, the Commission ordered that Boissoin "cease publishing, in newspapers, by email, on the radio, in public speeches, or on the Internet, in the future, disparaging remarks about gays and homosexuals," publish a written apology, and pay \$5,000 in damages.

¶14. (U) On August 6, 2008, following a year-long investigation, the Alberta Human Rights Commission rejected a complaint by the Edmonton Council of Muslim Communities against former Western Standard publisher Ezra Levant over his republication of the Danish Muhammad cartoons. The Commission ruled it would not refer the complaint for panel hearing, stating that while the cartoons were "stereotypical, negative and offensive," they were "related to relevant and timely news" and were "not simply gratuitously included." In February 2008, a Calgary Muslim leader withdrew a similar complaint against Levant. The complaints generated considerable public debate about the commission's mandate over hate speech. Since the filing of the complaints, Ezra Levant has become an outspoken and well-known critic of the commissions, arguing they are limiting free speech and restricting freedom of expression.

British Columbia

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¶15. (U) The British Columbia Human Rights Tribunal receives approximately 11,000 complaints each year, with about 50 to 75 going to hearing, and parties either dropping or resolving through mediation the remainder. Approximately 70 pct of complaints are

employment-related. British Columbia re-organized its commission system in 2005, turning its Human Rights Commission into a tribunal and stripping the institution of much of its power. Previously, the commission could represent parties, conduct investigations, and run educational programs. The tribunal possesses none of these powers. Cases now proceed almost directly to the complaint stage, and go through a streamlined process. After receiving a complaint, the Tribunal offers the parties the option of attending a tribunal-assisted settlement meeting prior to the respondent filing a response. A settlement meeting may also take place at any later stage. In addition, respondents have the right to ask for dismissal, which allows a tribunal judge to review written evidence ahead of a hearing to determine validity. In the 2006-2007 reporting year, the Tribunal handled 1,016 complaints, 222 of which it threw out at initial screening. Of the complaints it received, 61 pct were employment-related. The most common grounds for discrimination were physical disability, gender (including pregnancy), and mental disability. The Tribunal settled (either through mediation or hearing) 44 pct of complaints, did not accept 21 pct for review, and dismissed 19 pct. Parties withdrew or abandoned 9 pct and 7 pct respectively.

¶16. (SBU) The British Columbia Human Rights Tribunal heard testimony in the Maclean's case in early June 2008 and is currently deliberating, with a decision not likely for several months, possibly as late as December 2008. The Tribunal received written submissions in the case up to the beginning of July. The Maclean's case is only the second complaint to be brought under the discriminatory publications provisions of the British Columbia Human Rights Code. Officials informally commented to Poloff that the case proceeded to the hearing stage largely because neither party would agree to mediation, and because Maclean's refused to file an application for dismissal of the case, implying that both sides were looking to gain publicity for their causes.

BREESE